

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT H. NESBITT, JR.,

Plaintiff,

No. CIV S-03-2243 MCE DAD P

vs.

NEIL WAKABAYSHI, et al.,

Defendants.

ORDER TO SHOW CAUSE

The court has received plaintiff's untimely opposition to the motions for summary judgment filed by defendants Marsh and Davis on January 7, 2005. On March 21, 2005, the court ordered plaintiff to file and serve his opposition to these two motions on or before May 6, 2005. On May 13, 2005, the court granted plaintiff's timely request for a two-week extension of time, and ordered plaintiff to file his opposition to the Marsh and Davis motions on or before May 20, 2005. Plaintiff mailed his opposition to both motions after May 20, 2005.

Rule 6 of the Federal Rules of Civil Procedure provides that a party may act after the expiration of time specified by a court order only at the court's discretion and for cause shown. Fed. R. Civ. P. 6(b). When a request for enlargement of time is made after the expiration of the time specified, the party's request must be made by motion and must show that the failure to act timely was the result of excusable neglect. Id. Plaintiff will be granted seven days to file and serve a

1 motion for leave to file his opposition to the Marsh and Davis motions out of time. If plaintiff fails
2 to show cause, the court will impose an appropriate sanction.

3 In the March 21, 2005 order, the court set a May 27, 2005 deadline for the filing and
4 service of plaintiff's opposition to the summary judgment motions filed by defendants Cueva,
5 Putnam, Johnson, Gray, Eakin, and Cathleen Bidou in December 2004. Plaintiff did not request an
6 extension of the May 27, 2005 deadline, and the court's May 13, 2005 order extended only the
7 deadline for opposing the Davis and Marsh motions. As of June 13, 2005, the docket for this case
8 did not reflect the filing of opposition to the six motions. Plaintiff will be granted seven days to file
9 and serve a motion for leave to file opposition to these six motions out of time. The motion must be
10 accompanied by opposition to all six motions. If plaintiff fails to show cause or fails to file
11 opposition to all six motions, the court will deem defendants' motions unopposed and will
12 recommend that the motions be granted.¹

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. Within seven court days after this order is signed, plaintiff shall file and serve a
15 motion for leave to file opposition to the Marsh and Davis summary judgment motions out of time;
16 and

17 2. Within seven court days after this order is signed, plaintiff shall file and serve a
18 motion for leave to file opposition to the Cueva, Putnam, Johnson, Gray, Eakin, and Cathleen Bidou
19 summary judgment motions out of time; this motion must be accompanied by plaintiff's opposition
20 to each of the six motions.

21 DATED: June 14, 2005.

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23 DAD:13
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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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26 ¹ On or before June 17, 2005, plaintiff must file and serve his opposition to the summary
judgment motions filed by defendants Wakabayshi, James, and Matt Bidou.